

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 MONTE COOPER (STATE BAR NO. 196746)
mcooper@orrick.com
3 THERESA A. SUTTON (STATE BAR NO. 211857)
tsutton@orrick.com
4 YVONNE P. GREER (State Bar No. 214072)
ygreer@orrick.com
5 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
6 Menlo Park, CA 94025
Telephone: 650-614-7400
7 Facsimile: 650-614-7401

8 Attorneys for Plaintiffs
FACEBOOK, INC. and MARK ZUCKERBERG

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 FACEBOOK, INC. and MARK
ZUCKERBERG,

15 Plaintiffs,

16 v.

17 CONNECTU, INC. (formerly known as
18 CONNECTU, LLC) PACIFIC
NORTHWEST SOFTWARE, INC.
19 WINSTON WILLIAMS, and WAYNE
CHANG,

20 Defendants.
21

Case No. 5:07-CV-01389-JW (MEJ)

**FACEBOOK, INC. AND MARK
ZUCKERBERG'S JOINDER IN
CONNECTU'S RENEWED REQUEST
FOR HEARING DATE RELATING
TO PRODUCTION OF CONNECTU'S
DOCUMENTS**

1 Facebook, Inc. and Mark Zuckerberg (hereinafter "Facebook") hereby join in ConnectU's
 2 Renewed Request for Hearing Date Relating to Production of ConnectU's Documents. Docket
 3 No. 727. Facebook offers an additional basis on which ConnectU's request should be granted.
 4 That is, to determine the scope of the Court's turn-over order related to ConnectU's business and
 5 litigation files in light of ConnectU's former counsels' intentional and repeated waiver of the
 6 attorney client privilege.

7 Attached hereto as **Exhibit A** is a true and correct copy of Quinn Emanuel Urquhart
 8 Oliver & Hedges' Statement of Claim and Response to Counterclaim and its exhibits which was
 9 voluntarily filed with the Court on September 21, 2009 as an Exhibit to the Affirmation of Sean
 10 O'Shea by former counsel for ConnectU, Cameron Winklevoss, Tyler Winklevoss, and Divya
 11 Narendra in *ConnectU, Inc. v. Quinn Emanuel Urquhart Oliver & Hedges, LLP*, Case No. 08-
 12 602082 (N.Y. Super. Ct.). It has subsequently been filed voluntarily twice more by ConnectU's
 13 former counsel in that case on October 1, 2009, and November 4, 2009, respectively. The
 14 attached Exhibit A also was voluntarily filed with the Court by ConnectU's former counsel on
 15 November 23, 2009 as an Exhibit to the Declaration of Sean O'Shea in the action *ConnectU, Inc.*
 16 *v. Facebook, Inc.*, Civ. Action No. 1:07-CV-10593-DPW (D. Mass.). In all four instances, the
 17 documents also were served on opposing counsel in conjunction with various motions.

18 In previous pleadings before this Court, the founders argued that ConnectU is entitled to
 19 nothing more than its "business" files. The Honorable James Ware referred the parties to "Chief
 20 Magistrate Judge James for further proceedings with respect to which documents should be
 21 turned over to the current [ConnectU] owners." Declaration of Alison Buchanan (Docket No.
 22 728), Ex. A, 18:22; 19:1-2. In light of the waiver of the privilege via the multiple voluntary
 23 disclosures and service upon counsel of the documents, a determination of the scope of the waiver
 24 and, thus, the scope of the turn-over order is necessary.

25 Quinn Emanuel submitted previously privileged materials in a currently pending fee
 26 dispute arbitration between the firm and its former clients, ConnectU's founders. In September
 27 2009, the founders' current attorneys filed these same documents in the New York Supreme
 28 Court in support of their motion to compel production of documents. Since then, certain of the

1 previously privileged communications were filed in the District of Massachusetts in support of
2 Facebook's motion to enjoin the ConnectU founders and their present counsel from further
3 violations of various Protective Orders. In each of these instances, the founders have relied on
4 these communications to support their positions, without any effort to preserve the privilege.
5 Now, three months after the founders voluntarily provided their communications to Facebook,
6 their attorneys seek return of them.

7 ConnectU's renewed request for a hearing and briefing schedule related to the scope of
8 production of its files should be granted.

9 Dated: December 23, 2009

Orrick, Herrington & Sutcliffe LLP

11 /s/ Theresa A. Sutton /s/

12 Theresa A. Sutton

Attorneys for Plaintiffs

13 FACEBOOK, INC. and MARK ZUCKERBERG

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on December 23, 2009.

Dated: December 23, 2009.

Respectfully submitted,

/s/ Theresa A. Sutton /s/

Theresa A. Sutton